

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANDY ORTIZ,
Plaintiff,

v.

LT. HORSEY, *et al.*,
Defendants.

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CIVIL ACTION NO. 21-CV-3104

ORDER

AND NOW, this 11th day of January, 2022, upon consideration of Plaintiff Andy Ortiz's Motion to Proceed *In Forma Pauperis* and prisoner account statement (ECF No. 1, 9), and his *pro se* Amended Complaint (ECF No. 14), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.

2. Andy Ortiz, # 1212917, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Warden of Curran-Fromhold Correctional Facility or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Ortiz's inmate account; or (b) the average monthly balance in Ortiz's inmate account for the six-month period immediately preceding the filing of this case. The Warden or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Ortiz's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income

credited to Ortiz's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is directed to **SEND** a copy of this Order to the Warden of Curran-Fromhold Correctional Facility.

4. The Amended Complaint is **DEEMED** filed.

5. The Clerk of Court is **DIRECTED** to correct the name of Defendant C/O Bernett on the docket.

6. For the reasons stated in the Court's Memorandum, the Complaint is **DISMISSED IN PART WITH PREJUDICE AND IN PART WITHOUT PREJUDICE** as follows:

a. All claims against the Philadelphia Department of Prisons, all claims based on lost property and access to the courts, all claims based on grievances, and all claims based on taunting by guards are **DISMISSED WITH PREJUDICE**.

b. Ortiz's municipal and official capacity claims against Defendant Carney and the City of Philadelphia is **DISMISSED WITHOUT PREJUDICE**.

7. Ortiz may file a second amended complaint within thirty (30) days of the date of this Order. Any amended complaint must identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint and shall state the basis for Ortiz's claims against each defendant. **The second amended complaint shall be a complete document that includes all of Ortiz's claims, including his claims against Defendants Bernett, Amazon, Horsey, White, Petel, Tita, Bailey, and Martin.** It may not rely on the Amended

Complaint or other papers filed in this case to state a claim. When drafting his second amended complaint, Ortiz should be mindful of the Court's reasons for dismissing the claims in his Amended Complaint as explained in the Court's Memorandum. Upon the filing of a second amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

8. The Clerk of Court is **DIRECTED** to send Ortiz a blank copy of the Court's form complaint for a prisoner filing a civil rights action bearing the above civil action number. Ortiz may use this form to file his amended complaint if he chooses to do so.¹

9. If Ortiz does not file an amended complaint the Court will direct service of his Amended Complaint on Defendants Bennett, Amazon, Horsey, White, Petel, Tita, Bailey, and Martin **only**. Ortiz may also notify the Court that he seeks to proceed on these claims rather than file a second amended complaint. If he files such a notice, Ortiz is reminded to include the case number for this case, 21-3104.

10. The time to serve process under Federal Rule of Civil Procedure 4(m) is **EXTENDED** to the date 90 days after the Court issues summonses in this case if summonses are issued.

BY THE COURT:

/s/ Gerald J. Pappert

GERALD J. PAPPERT, J.

¹ This form is available on the Court's website at <http://www.paed.uscourts.gov/documents/forms/frmc1983f.pdf>.